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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,460	05/08/2001	Ulrich Reiners	9784-3U2 (TH8002US/B)	4175

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EXAMINER

KRUER, KEVIN R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/851,460

Applicant(s)

REINERS ET AL.

Examiner

Kevin R Kruer

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1-20.Claim(s) withdrawn from consideration: NONE.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Advisory Action

This advisory action is in response to Applicant's "Request for a New Office Action after Final" filed April 19, 2004. The examiner will address the issues upon which Applicant has requested clarification.

Applicant notes that the "Office Action Summary" and the examiner's "Response to Arguments" in the Final Action stated that the office action was in response to the amendment filed 30 October 2003, but did not explicitly state that the supplemental amendment filed January 4, 2004 had been considered. The examiner apologizes for any confusion the exclusion may have caused. However, it is clear from the Final Action that the January 4, 2004 supplemental amendment was fully considered and addressed. Specifically, new claims 18-20 were rejected. Furthermore, the examiner acknowledged applicant's arguments filed January 14, 2004 with regard to Miyazaki.

Applicant also requested clarification with regards to the examiner's comments on the bottom of page 3 of the Final Action mailed February 13, 2004. Specifically, the examiner stated that the rejection of claim 18 over Miyazaki under 35 U.S.C. 102(b) had been overcome by argument. Claim 18 had never been rejected over Miyazaki. The examiner notes the error and apologizes for any inconvenience it may have caused.

Applicant further argues that the Final Office Action failed to address the amendment to claim 1 or the limitations of new claims 18-20. While no new statements were added to the rejection statements, the limitations had been previously addressed in the Non-Final Office Action. With regard to the limitation in claim 1 that "the sealing layer forms the other of the two surface layers of the film and the barrier layer is

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sandwiched between the filled layer and the sealing layer,” the Office action noted that the barrier layer of Farrell was ***interposed*** between the inner and outer layers of the laminate (see paragraph #4 on page 3). Furthermore, it is noted in paragraph #5 that, “Schirmer teaches a thermoforming laminate comprising a surface film, a barrier film, and a sealant film (abstract).” It is clear from reading the cited portion of Schirmer that the barrier layer is sandwiched between the other two layers.

With regard to claims 18 and 19, the rejection noted that Schirmer in view of Miyazaki taught that the filler consists of mostly talc (abstract). Thus, the examiner maintains that Schirmer in view of Miyazaki reads on the claimed “consisting essentially of a single filler” limitation of claim 18. With regards to the limitations of claims 18 and 19, the Office Action noted Farrell taught that the filler may be calcium carbonate (page 3, third line from the bottom). Furthermore, the Non-Final Office Action noted that Bochow in view of Hattori taught calcium carbonate may be used as the filler (page 8 of the non-final office action, middle paragraph).

The limitations of claim 20 are addressed in paragraph #7 and on the top of page 5 in the non-final office action mailed 4/28/2003.

Applicant also asked the examiner to address the arguments made with regard to the Miyazaki reference as they relate to the outstanding 35 U.S.C. 103(a) rejections. The majority of arguments with regard to Miyazaki seem to be relevant only to the overcome 35 U.S.C.102(b) rejection based upon the teachings of Miyazaki. However, the examiner will attempt to fully address applicant’s arguments as they relate to the outstanding rejections.

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Applicant argues that the adhesive layer taught in Miyazaki would not read on the claimed barrier layer and the polyolefin layer of Miyazaki would not read on the claimed sealing layer. However, the outstanding rejections do not rely upon Miyazaki for such a teaching. The primary references were relied upon to teach the claimed barrier and sealing layers.

Applicant further argues that the teachings of Miyazaki are drawn to a cup, not a film for forming sealing packages. The examiner disagrees with applicant's summary of Miyazaki. Miyazaki is drawn to thermoformed polyolefin materials. The examiner considers Miyazaki to be analogous with the various primary references because Miyazaki is reasonably pertinent to the particular problem with which the inventor was concerned-the thermoformability of a polyolefin laminate.

Applicant further argues that Miyazaki does not teach a filler layer that contains a single inorganic filler. However, the claims are not limited to a filled layer consisting of a single inorganic filler. The narrowest claim states that the filler "consists essentially of a single filler." Such a limitation does not exclude the presence of other fillers. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a single filler) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

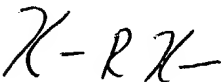
For the reasons stated above and noted in the Final Office Action, the rejections are maintained.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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